

NIH POLICY MANUAL

2300-304-1 - EMPLOYMENT OF NIH, NCI and NHLBI SPECIAL EXPERTS

Issuing Office: OD/OHRM/SASED 496-1443

Release Date: 11/01/99

1. Explanation of Material Transmitted: This issuance provides uniform guidance on the NIH, NCI, and NHLBI statutory authorities for employing experts and consultants who have a high level of scientific or other professional qualifications. These individuals are referred to as "Special Experts" and this term will be used throughout this issuance.

2. Filing Instructions:

Remove: NIH Manual 2300-304-1, Employment of Special Experts, dated 9/16/99

Insert: NIH Manual 2300-304-1, Employment of NIH, NCI and NHLBI Special Experts, dated 11/01/99

PLEASE NOTE: For information on:

- Content of this chapter, contact the issuing office listed above.
 - NIH Manual 1130, contact the Office of Management Assessment, OMA, on 496-4606.
 - NIH Manual System, Contact the Office of Management Assessment, OMA, on 496-2832.
 - On-line information, enter this URL: <http://www3.od.nih.gov/oma/manualchapters/>
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A. Authorities and Common Provisions: The following provisions of the Public Health Service Act authorize the appointment of Special Experts and Consultants: 42 U.S.C. 282(d)(1), for NIH up to 220 positions; 42 U.S.C. 285b-3(b)(1), for the National Heart, Lung, and Blood Institute (NHLBI), up to 100 positions; and 42 U.S.C. 285a-2(b)(5), for the National Cancer Institute (NCI), up to 151 positions. All Special Expert appointments are in the excepted service. All appointments made under these authorities are referred to as Special Experts in this document. The general authority to issue NIH-wide policy on Special Experts derives from 42 U.S.C. 282 (b).

All three statutory provisions describe Special Experts as those individuals who have a high level of scientific or other professional qualifications. In addition, 42 U.S.C. 282(2)(A) authorizes travel for all NIH, NHLBI and NCI Special Experts and Consultants to and from their assignments. With the exception of setting pay at some levels as specified in NIH Manual Chapter 2300-320-2 (dated 3/17/98), "Use of 42 U.S.C. Sections 209 (g) and 209 (h) and 42 C.F.R. Part 61B for Appointments of Scientists," IC Directors have the authority to give final approval to all personnel actions for Special Experts within their organizations. IC Directors may redelegate this authority to other IC officials with sufficient knowledge and expertise to exercise this authority in accordance with all policies and consistent with sound management principles. Delegations of authority to

lower level IC officials must be made in writing.

With the exception of setting pay at some levels as specified in NIH Manual Chapter 2300-320-2 (dated 3/17/98), "Use of 42 U.S.C. Sections 209 (g) and 209 (h) and 42 C.F.R. Part 61B for Appointments of Scientists," the Deputy Director, NIH has the authority to give final approval to personnel actions for Special Experts within the Office of the Director. This authority may also be redelegated in writing to other officials within the Office of the Director.

B. Background: Special Expert appointments are temporary in nature. Appointments may be given and renewed when needed to accomplish the goals and mission of NIH or the Institute and Center (IC) in which they serve. There are a variety of reasons for which appointments may be made. The following list of uses of this authority are examples only; other uses may be made of this appointment authority as needed to help accomplish the goals and mission of NIH or the employing IC:

1. To undertake major new organizational assignments and initiatives;
2. To advise management on, or participate in, restructuring and redirecting existing programs;
3. To develop and/or evaluate new procedures, techniques, or programs;
4. To train existing staff in new techniques and procedures;
5. To provide an expertise needed to advance a program or project; and,
6. To meet critical employment needs for scientists or other professionals who have a high level of qualifications.

C. Length of Appointments: Initial Special Expert appointments may be made for up to five years, and may be renewed. Management should make prudent use of these authorities and periodically assess each Special Expert's appointment and performance to assure that there is a continuing need for the appointment. However, at a minimum, management must assess the continuing need for a Special Expert appointment and his/her performance prior to the end of each appointment. If management concludes that there is no longer a need for a Special Expert or that the performance of the expert is not satisfactory enough to retain the Special Expert, then management should let the appointment expire. If the IC assessment demonstrates there is a continuing need for the services of a Special Expert to carry out the goals and programs of the IC and the performance of the Special Expert is satisfactory, the IC may extend the appointment. There is no limit on the number of extensions that can be given to a Special Expert. The results of each assessment must be documented in writing and retained in each Special Expert's official personnel file.

A Special Expert counts against an IC's FTE ceiling.

D. Duty Basis: Normally, work assigned to NIH Special Experts is full time, but the appointment can be part time or intermittent, based on the demands of the job for which the Special Expert is being appointed.

E. Qualifications: An individual appointed as a Special Expert must have a high level of scientific or other professional qualifications and expertise in a field related to the program needs of an IC, or the Office of the Director, NIH. The Qualification Standards Handbook for General Schedule Employees will serve as a guide for determining qualification eligibility up to the GS-15 level. For a Special Expert appointed to a position with duties equivalent to the SES level, the Special Expert must have qualifications that exceed the qualification standards for the GS-15 level. The qualifications of a Special Expert must be fully documented in writing and made a part of the appointment package. The qualifications can be provided in the memorandum of recommendation for initial appointment and/or the HHS-410. The documentation of a Special Expert's qualifications is to be retained in the individual's official personnel file.

In addition, an individual appointed to a Special Expert position must be a U.S. citizen, resident alien or nonresident alien from a treaty allied country with a valid employment-authorized visa.

F. Compensation: Since most Special Experts will be full time, annual salary must be commensurate with each Special Expert's qualifications and experience. Appointments other than full time will be paid on a pro rata basis of an annualized salary. Pay setting will be based on the pay level guidelines and approval authorities for Title 42 appointments contained in NIH Manual Chapter 2300-320-2 (dated 3/17/98), "Use of 42 U.S.C. Sections 209 (g) and 209 (h) and 42 C.F.R. Part 61B for Appointments of Scientists." Initial pay setting and all subsequent pay adjustments for Special Experts must be fully documented in writing and made a permanent part of each Special Expert's official personnel file.

Each IC is responsible for setting initial pay and subsequent pay adjustments consistently so that Special Experts occupying the same type of positions with equivalent or similar education, experience, and accomplishments are treated equitably within the IC.

G. Benefits: A Special Expert initially appointed for more than 12 months is entitled to the same benefits as competitive civil service employees. These benefits include annual and sick leave, retirement (CSRS, or FERS and Social Security), workers compensation, health and life insurance benefits, occupational medical service facilities, medicare, withholding tax, and medical qualifications. Once a Special Expert is enrolled in any of these programs, his/her eligibility continues into succeeding appointments or extensions -- even if for less than one year -- as long as there is no break in service of more than three days. However, a Special Expert appointed for 12 months or less is not entitled to benefits, except leave for which a Special Expert accumulates hours of annual and sick leave at the same rate as permanent employees with the same amount of service and a Special Expert may take annual or sick leave immediately.

H. Travel and Reimbursable Expenses:

Service Agreements for Travel Expenses: By law, full time and part-time Special Experts "....shall be paid or reimbursed for their expenses associated with traveling to and from their assignment location (i.e., first duty station) in accordance with Title 5, United States Code." However, these expenses... "shall not be allowed in connection with the assignment... unless and until the expert or consultant has agreed in writing to complete the entire period of the

assignment or one year of the assignment, whichever is shorter, unless separated or reassigned for reasons which are beyond the control of the expert or consultant and which are acceptable to the IC or the Office of the Director, NIH. If the expert or consultant violates the agreement, the money spent by the United States for these expenses is recoverable from the expert or consultant as a debt due the United States." Intermittent Special Experts are not entitled to travel to first duty station, but are entitled to travel and per diem expenses associated with periodic travel between home and their duty station.

The Director, OHRM may waive, in whole or in part, a right of recovery of monies under a service agreement if a Special Expert leaves his/her appointment at NIH for reasons under his/her own control.

A Special Expert will be reimbursed for travel expenses soon after they report for duty and sign a service agreement.

Travel expenses will not be provided to individuals whose permanent residence was within the commuting area of the assignment location at the time of their initial appointment. Changes of duty station to locations outside of the original commuting area will entitle Special Experts to reimbursement for travel expenses incurred in moving to and from a new duty station.

Special Expert is entitled to travel allowances or transportation and per diem while traveling on official business during the term of his/her appointment. For further information on travel expenses, refer to the Federal travel regulations and NIH Manual Chapter 1500, ATravel Policies and Procedures.@

I. Standards of Conduct and Financial Disclosure: A Special Expert is subject to the "Standards of Ethical Conduct for Employees of the Executive Branch." In addition a Special Expert is subject to the restrictions on political activity, outside work, conflict of interest and tort claims as are regular competitive civil service employees.

A Special Expert may be subject to filing a financial disclosure report. An IC Deputy Ethics Counselor or the Deputy Ethics Counselor for the Office of the Director, NIH, determines the filing status of a Special Expert. Guidelines for determining which employees must file a financial disclosure report will be provided to Deputy Ethics Counselors and Ethics Coordinators annually by the Senior and Scientific Employment Division, OHRM.

The filing status of a Special Expert is determined as follows:

1. Any appointee who has grant, contract or other fund expenditure authority must file an OGE-450, "Confidential Financial Disclosure Report" within 30 days of initial appointment.
2. Following the initial filing of an OGE-450, there is an annual filing requirement. The appointee's Deputy Ethics Counselor determines each year whether Special Experts must file an OGE-450 form or an OGE-450A form.
3. If a Special Expert is appointed to the position of IC Director, he/she must file a SF-278, "Public Financial Disclosure Report."

J. Training: A Special Expert is a Government employee and therefore is eligible for the same training that is available to competitive civil service employees under the Government Employees Training Act.

K. Documentation Requirements:

Initial Appointments. Requests to appoint an individual to a Special Expert position should be submitted in the form of a SF-52, a memorandum of recommendation, and a HHS-410. The memorandum of recommendation must contain a summary of the need for the services of a Special Expert and the rationale for the setting of his/her initial pay. The HHS-410 should contain a description of the appointee's qualifications and a description of the duties and responsibilities that the individual will be expected to perform as a Special Expert. This information is prepared by the program official making the request and transmitted through the IC Personnel Officer to the IC Director for final review and approval. Offers of initial appointment must be made to appointees in writing by IC Directors or designee(s) and must include the beginning and termination dates. In addition, the selectee must be sent a letter of instruction on reporting for duty and taking a physical examination, if required.

Pay Adjustments. A Special Expert may be considered for one or more pay adjustments in a service year as specified in Section F, Compensation, of this issuance. Whenever a Special Expert is given a pay adjustment, the rationale for the pay adjustment must be provided in writing and kept as a part of the Special Expert's official personnel folder.

Extensions. Whenever a Special Expert appointment is extended, an explanation of the need for the continuing services of the Special Expert must be included in the memorandum of recommendation from the program official and accompanied by a SF-52. The rationale for the extension can be documented on the HHS-410. A pay adjustment can also be made at the time of the extension provided the pay adjustment is in accordance with the guidelines contained in Section F, Compensation. The rationale for the pay adjustment must be included in the memorandum of recommendation for the extension. In addition, offers of extension(s) must be made to the employee in writing by the IC Director or designee(s) and must include the beginning and termination dates of the extension.

Non-citizen. Each Special Expert is subject to the appropriation act restrictions on the appointment of a non-citizen. A non-citizen may be appointed to a Special Expert position provided he/she is a citizen of a nation aligned with the United States, is a resident alien, or nonresident alien with a valid employment-authorized visa. All questions concerning visa status and permission to work in the United States should be addressed to the Chief, International Services Branch, FIC. If the proposed appointee is a non-citizen, this fact should be noted, the appointee's nationality specified, visa status and the appointment documentation must be accompanied with a statement of

compliance with the Appropriation Act limitations. This information should be prepared by the program official making the request and transmitted through the IC Personnel Officer to the IC Director or designee(s) for final review and approval.

Record keeping. Each IC personnel office will be responsible for collecting records on each Special Expert appointed within their IC. The records necessary for the preparation and maintenance of an Official Personnel Folder include the following:

1. A letter of agreement to remain in service is to be retained if a Special Expert is reimbursed for their expenses associated with traveling to and from his/her first duty station;
2. A copy of approved memorandum of recommendation for initial appointment;
3. Copies of any approved memorandum of recommendation for extension of an appointment;
4. Copies of written offer of initial appointment and extension(s) made to the appointee with a beginning and termination date;
5. Copies of any approved recommendation for periodic pay adjustments.
6. Copies of the Special Experts' curriculum vitae and bibliography; SF-171; OF-612 or any other written format which provides information of the qualifications and work experience of the person to be appointed to a Special Expert position;
7. Copy of HHS-410 that describes the assignment and duties of a Special Experts and also documents his/her qualifications; and, can be approved by the IC officials.

L. Allocation of Special Expert Positions:

Special Expert positions are allocated by legislation directly to the Director, NIH, the Director, NCI, and the Director, NHLBI. The remaining IC's receive their Special Expert positions from those allocated by legislation to the Director, NIH. Requests for slots beyond each IC's individual allocation of Special Expert positions must be made in writing to the Director, Office of Human Resource Management (OHRM).

M. Awards:

A Special Expert is an employee and is eligible for all awards that can be given to competitive service employees, including both honorary and monetary awards. Managers should follow all applicable policies and requirements when seeking an award for a Special Expert. The approval of awards must be consistent with the NIH personnel delegations of authority.

N. Termination:

An appointment may be terminated before the expiration date for cause: e.g., personal or scientific misconduct; lack of satisfactory performance; or for administrative reasons. In intramural programs, these conditions and reasons are specified in a letter from the IC Director, or designee(s), to the appointee. In other programs, administrative reasons include but are not limited to programmatic changes, budgetary constraints, and lack of funds.

O. Performance Assessment:

Special Experts are not covered by the NIH performance management system unless the IC has a policy requiring that their Special Experts be given regular annual performance appraisals.

In the absence of an IC policy requiring annual performance appraisals, Special Experts must have their performance assessed at a minimum at the end of their initial appointment and at the end of each extension.

P. Conversion to Civil Service Status:

The conversion of Special Experts to competitive civil service positions will be subject to OPM certification requirements for appointments to the competitive service.

Q. Records Retention and Disposal:

All records (e-mail and non-e-mail) pertaining to this chapter must be retained and disposed of under the authority of NIH Manual 1743, "Keeping and Destroying Records, Appendix 1, "NIH Records Control Schedule," records disposition item 2300-320-4, AExpert Series Program Files.@

NIH e-mail messages. NIH e-mail messages (messages, including attachments, that are created on NIH computer systems or transmitted over NIH networks) that are evidence of the activities of the agency or have informational value are considered Federal records. These records must be maintained in accordance with current NIH Records Management guidelines. Contact your IC Records Officer for additional information.

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All e-mail messages are considered Government property, and, if requested for a legitimate Government purpose, must be provided to the requester. Employees' supervisors, NIH staff conducting official reviews or investigations, and the Office of Inspector General may request access to or copies of the e-mail

messages. E-mail messages must also be provided to Congressional oversight committees if requested and are subject to Freedom of Information Act requests. Since most e-mail systems have back-up files that are retained for significant periods of time, e-mail messages and attachments are likely to be retrievable from a back-up file after they have been deleted from an individual's computer. The back-up files are subject to the same requests as the original messages.

R. Program Review and Evaluation:

The OHRM will periodically review the manner in which the Special Expert authorities are being utilized. These reviews will be used to determine whether:

1. The procedures in this issuance are effective in meeting the needs of management;
2. Appointments, extensions and conversions are being made in accordance with program requirements;
3. Modification of these operating guidelines are needed; and
4. There is a need to request legislative authority to appoint additional Special Experts.

S. Management Controls:

The purpose of this manual issuance is to provide consistent policies and procedures for application to all three Special Expert authorities at the NIH.

1. The OHRM will be responsible for conducting these reviews.
2. The policy and implementation of the Special Expert issuance will be conducted approximately every four or five years.
3. The method of review will consist of a review of a stratified sample of cases to assure that all statutory, regulatory, policy and procedural requirements have been met.
4. Review report is sent to the Director, OHRM.

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